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HOUSE BILL 1008

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

JERRY LEE ALWIN

AN ACT

RELATING TO CORRECTIONS; AUTHORIZING THE CORRECTIONS DEPARTMENT TO ENTER INTO A CONTRACT TO LEASE A PRIVATE CORRECTIONAL FACILITY; AUTHORIZING THE NEW MEXICO FINANCE AUTHORITY TO ISSUE REVENUE BONDS FOR THE CONSTRUCTION OF A STATE CORRECTIONAL FACILITY; PROVIDING FOR DISTRIBUTION OF A PORTION OF GROSS RECEIPTS TAX REVENUES; CREATING A FUND; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. LEGISLATIVE FINDINGS-- PURPOSE. --

A. The legislature recognizes that New Mexico's correctional facilities are seriously overcrowded now and cannot accommodate any anticipated growth in correctional facility populations. To address this emergency, the state must seek

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1 immediate opportunities to house inmates in existing  
2 correctional facilities and to construct an additional facility.

3 B. It is the purpose of this act to provide  
4 authority for the corrections department to contract with  
5 private correctional facility to house inmates as soon as  
6 possible and to provide also for financing a new state  
7 correctional facility in a location in the central part of the  
8 state.

9 Section 2. [NEW MATERIAL] CONTRACT TO HOUSE INMATES. --

10 A. The corrections department shall solicit  
11 proposals for the purpose of entering into a contract with a  
12 private detention facility pursuant to Subsection G of Section  
13 31-20-2 NMSA 1978.

14 B. The facility contracting with the corrections  
15 department pursuant to Subsection A of this section shall:

16 (1) be privately financed, designed,  
17 constructed and operated by the contractor; provided that a  
18 facility financed by bonds issued pursuant to the Industrial  
19 Revenue Bond Act or the County Industrial Revenue Bond Act and  
20 sold to the contractor shall be privately financed by the  
21 contractor for the purposes of this paragraph;

22 (2) consist of one thousand two hundred or more  
23 beds of which two hundred forty or more shall be administrative  
24 segregation or maximum security beds and expandable to two  
25 thousand two hundred beds; and

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1 (3) be located in Bernalillo, Santa Fe, Cibola,  
2 Socorro, Valencia, Sandoval or Torrance county.

3 C. The corrections department shall solicit  
4 proposals and award any contract under this section in  
5 accordance with the provisions of the Procurement Code. The  
6 contract shall include such terms and conditions as the  
7 department may require after consultation with the general  
8 services department; provided that the terms and conditions  
9 shall include provisions:

10 (1) setting forth comprehensive standards for  
11 conditions of incarceration;

12 (2) requiring that the facility be accredited  
13 by the American correctional association within one year after  
14 beginning operation and remain accredited through the life of  
15 the contract;

16 (3) that the contractor assumes all liability  
17 caused by or arising out of all aspects of the provision or  
18 operation of the facility;

19 (4) for liability insurance or other proof of  
20 financial responsibility acceptable to the general services  
21 department that covers the contractor and its officers,  
22 employees and agents in an amount sufficient to cover all  
23 liability caused by or arising out of all aspects of the  
24 provision or operation of the facility;

25 (5) for termination for cause upon ninety days'

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1 notice to the contractor for failure to meet contract provisions  
2 when such failure seriously affects the availability or  
3 operation of the facility;

4 (6) that venue for the enforcement of the  
5 contract shall be in the district court for Santa Fe county;

6 (7) that continuation of the contract is  
7 subject to the availability of funds;

8 (8) that compliance with the contract shall be  
9 monitored by the corrections department and the contract may be  
10 terminated for noncompliance; and

11 (9) that payments under the contract be made  
12 only on a per diem per prisoner basis without any additional or  
13 separate charge for capital costs.

14 Section 3. [NEW MATERIAL] EMERGENCY CONTRACT TO HOUSE  
15 INMATES. --

16 A. In order to meet an immediate need for additional  
17 facilities to house inmates, no later than December 31, 1997 the  
18 corrections department may, pursuant to Subsection G of Section  
19 31-20-2 NMSA 1978, enter into a contract with a private facility  
20 to house between six hundred and eight hundred medium security  
21 inmates. Any facility contracting with the corrections  
22 department pursuant to this section shall be privately operated  
23 by the contractor.

24 B. The award of any contract pursuant to Subsection  
25 A of this section shall be exempt from the provisions of the

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1 Procurement Code. Any contact entered into pursuant to this  
2 section shall contain the same provisions as required by  
3 Paragraphs (1) through (9) of Subsection C of Section 2 of this  
4 act.

5 Section 4. A new section of the New Mexico Finance  
6 Authority Act is enacted to read:

7 "[NEW MATERIAL] PRISON FINANCING FUND CREATED. --

8 A. The "prison financing fund" is created within the  
9 authority. The fund shall be administered by the authority as a  
10 separate account. The authority is authorized to establish  
11 procedures and adopt regulations as required to administer the  
12 fund in accordance with the New Mexico Finance Authority Act.

13 B. The prison financing fund shall consist of money  
14 appropriated, distributed or otherwise allocated to the fund for  
15 the purpose of financing a correctional facility in Bernalillo,  
16 Santa Fe, Cibola, Socorro, Valencia, Sandoval or Torrance  
17 county.

18 C. Money appropriated to pay administrative costs  
19 and money available for administrative costs from other sources  
20 shall not be deposited in the prison financing fund but shall be  
21 deposited in a separate account of the authority and may be used  
22 by the authority to meet administrative costs of the authority.  
23 The authority is authorized to deduct administrative costs  
24 annually from the fund prior to making the transfer required by  
25 Subsection F of this section.

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1           D. Money in the prison financing fund not needed for  
2 immediate disbursement, including any money held in reserve, may  
3 be deposited with the state treasurer for short-term investment  
4 pursuant to Section 6-10-10.1 NMSA 1978 or may be invested in  
5 direct and general obligations of or obligations fully and  
6 unconditionally guaranteed by the United States, obligations  
7 issued by agencies of the United States, obligations of this  
8 state or any political subdivision of the state, interest-  
9 bearing time deposits, commercial paper issued by corporations  
10 organized and operating in the United States and rated "prime"  
11 quality by a national rating service or as otherwise provided by  
12 the trust indenture or bond resolution, if money in the fund is  
13 pledged for or to secure payment of bonds issued by the  
14 authority.

15           E. The authority shall establish fiscal controls and  
16 accounting procedures that are sufficient to assure proper  
17 accounting for correctional facilities financing fund payments,  
18 disbursements and balances.

19           F. At the end of any fiscal year, after all debt  
20 service charges, replenishment of reserves and administrative  
21 costs on all outstanding revenue bonds, notes or other  
22 obligations payable from the prison financing fund are  
23 satisfied, the balance remaining in the correctional facilities  
24 financing fund shall be transferred to the general fund for  
25 appropriation by the legislature. "

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1           Section 5. A new section of the Tax Administration Act is  
2 enacted to read:

3           " [NEW MATERIAL] DISTRIBUTION-- NEW MEXICO FINANCE  
4 AUTHORITY-- GROSS RECEIPTS TAX. --

5           A. A distribution pursuant to Section 7-1-6.1 NMSA  
6 1978 shall be made to the prison financing fund administered by  
7 the New Mexico finance authority in an amount equal to one and  
8 one-fourth percent of the net receipts attributable to the gross  
9 receipts tax imposed by the Gross Receipts and Compensating Tax  
10 Act.

11           B. The state pledges to and agrees with the holders  
12 of any bonds issued by the New Mexico finance authority and  
13 payable from the net receipts attributable to the gross receipts  
14 tax distributed to the prison financing fund administered by the  
15 New Mexico finance authority pursuant to this section that the  
16 state will not limit, reduce or alter the distribution of the  
17 net receipts attributable to the gross receipts tax to the  
18 prison financing fund or limit, reduce or alter the rate of  
19 imposition of the gross receipts tax until the bonds and the  
20 interest on the bonds are fully met and discharged or provision  
21 has been made for the full payment and discharge. The New  
22 Mexico finance authority is authorized to include this pledge  
23 and agreement of the state in any agreement with the holders of  
24 the bonds. "

25           Section 6. Section 33-1-17 NMSA 1978 (being Laws 1985,

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1 Chapter 149, Section 1, as amended) is amended to read:

2 "33-1-17. PRIVATE CONTRACT. --

3 A. The corrections department may contract for the  
4 operation of any adult female facility or for housing adult  
5 female inmates in a private facility with a person or entity in  
6 the business of providing correctional or jail services to  
7 government entities.

8 B. The corrections department may contract with a  
9 person or entity in the business of providing correctional or  
10 jail services to government entities for

11 [~~(1) a correctional facility in Guadalupe~~  
12 ~~county of not less than five hundred fifty and not more than two~~  
13 ~~thousand two hundred beds;~~

14 ~~(2) a correctional facility in Lea, Chaves or~~  
15 ~~Santa Fe county of not less than one thousand two hundred and~~  
16 ~~not more than two thousand two hundred beds;~~

17 ~~(3) design and construction of a support~~  
18 ~~services building, a laundry and an infirmary at the~~  
19 ~~penitentiary of New Mexico in Santa Fe; or~~

20 (4)] construction of a public facility to house  
21 a special incarceration alternative program for adult male and  
22 adult female felony offenders.

23 [~~C. The authorization in Subsection B of this~~  
24 ~~section for a correctional facility in Guadalupe county and a~~  
25 ~~correctional facility in Lea, Chaves or Santa Fe county is~~

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1 ~~contingent upon construction of both facilities, so that one of~~  
2 ~~the facilities shall not be constructed unless both of the~~  
3 ~~facilities are constructed, as nearly as practicable,~~  
4 ~~simultaneously.~~

5           D.] C. The corrections department shall solicit  
6 proposals and award any contract under this section in  
7 accordance with the provisions of the Procurement Code. The  
8 contract shall include such terms and conditions as the  
9 corrections department may require after consultation with the  
10 general services department; provided that the terms and  
11 conditions shall include provisions:

12                   (1) setting forth comprehensive standards for  
13 conditions of incarceration;

14                   (2) that the contractor assumes all liability  
15 caused by or arising out of all aspects of the provision or  
16 operation of the facility;

17                   (3) for liability insurance or other proof of  
18 financial responsibility acceptable to the general services  
19 department covering the contractor and its officers, employees  
20 and agents in an amount sufficient to cover all liability caused  
21 by or arising out of all aspects of the provision or operation  
22 of the facility;

23                   (4) for termination for cause upon ninety days'  
24 notice to the contractor for failure to meet contract provisions  
25 when such failure seriously affects the availability or

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1 operation of the facility;

2 (5) that venue for the enforcement of the  
3 contract shall be in the district court for Santa Fe county;

4 (6) that continuation of the contract is  
5 subject to the availability of funds; and

6 (7) that compliance with the contract shall be  
7 monitored by the corrections department and the contract may be  
8 terminated for noncompliance.

9 ~~[E.]~~ D. When the contractor begins operation of a  
10 facility for which private contractor operation is authorized,  
11 his employees performing the functions of correctional officers  
12 shall be deemed correctional officers for the purposes of  
13 Sections 33-1-10 and 33-1-11 NMSA 1978 but for no other purpose  
14 of state law, unless specifically stated.

15 ~~[F.]~~ E. Any contract awarded pursuant to this  
16 section may include terms to provide for the renovation of the  
17 facility or for the construction of new buildings. Work  
18 performed pursuant to such terms and conditions shall not be  
19 considered a capital project as defined in Section 15-3-23.3  
20 NMSA 1978 or a state public works project as defined in Section  
21 13-1-91 NMSA 1978 nor shall it be subject to the requirements of  
22 Section 13-1-150 NMSA 1978 or of the Capital Program Act, review  
23 by the staff architect of the property control division of the  
24 general services department pursuant to Section 15-3-20 NMSA  
25 1978 or regulation by the director of that division pursuant to

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1 Section 15-3-11 NMSA 1978.

2 [G-] E. Any contract entered into by the corrections  
3 department with a private contractor to operate an existing  
4 facility shall include a provision securing the right of all  
5 persons employed by that facility prior to the effective date of  
6 that contract to be employed by that contractor in any position  
7 for which they qualify before that position is offered to any  
8 person not employed by that facility prior to that date."

9 Section 7. Section 33-1-18 NMSA 1978 (being Laws 1990  
10 (1st. S.S.), Chapter 5, Section 1, as amended) is amended to  
11 read:

12 "33-1-18. [~~FUNDS~~] FUND CREATED. -- There [~~are~~] is created in  
13 the state treasury a special [~~funds~~] fund to be known as the  
14 "corrections department building fund" [~~the "Guadalupe county~~  
15 ~~prison fund" and the "New Mexico prison fund"~~]. The [~~funds~~]  
16 fund shall consist of money appropriated by the legislature,  
17 from year to year, from the income of the permanent fund and  
18 land income of which the penitentiary of New Mexico is the  
19 beneficiary [~~and any other revenues that are appropriated to the~~  
20 ~~funds, other than revenues derived from property taxes or~~  
21 ~~general fund revenues~~]. Income from investment of [~~each~~  
22 ~~special~~] the corrections department building fund [~~created by~~  
23 ~~this section~~] shall be credited to [~~that~~] the fund."

24 Section 8. Section 33-1-19 NMSA 1978 (being Laws 1990  
25 (1st. S.S.), Chapter 5, Section 2, as amended by Laws 1995,

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1 Chapter 43, Section 1 and also by Laws 1995, Chapter 215,  
2 Section 4) is amended to read:

3 "33-1-19. USE OF FUNDS. --

4 A. The ~~[funds created in or pursuant to Section~~  
5 ~~33-1-18 NMSA 1978]~~ corrections department building fund shall be  
6 used by the corrections department or the state board of finance  
7 for the purpose of acquiring, designing, constructing or  
8 equipping, by lease or lease-purchase, or by financing the  
9 ownership by the corrections department through the issuance of  
10 bonds or other obligations by the corrections department or the  
11 state board of finance, or other means, a corrections department  
12 central office complex, a personnel training academy, a special  
13 incarceration alternative facility. ~~[correctional facilities or~~  
14 ~~any combination of these facilities, and for paying the expenses~~  
15 ~~relating to the lease, lease-purchase or financing of these~~  
16 ~~facilities. Before any of the funds created in Section 33-1-18~~  
17 ~~NMSA 1978 may be used for any such purpose, the state board of~~  
18 ~~finance shall approve the proposed facility and the proposed use~~  
19 ~~of the funds.~~

20 B. ~~The funds created in or pursuant to Section~~  
21 ~~33-1-18 NMSA 1978 shall be used so that available appropriations~~  
22 ~~are devoted to the following projects:~~

23 (1) ~~payment for the corrections department~~  
24 ~~central office complex;~~

25 (2) ~~a correctional facility in Guadalupe county~~

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1 ~~of not less than five hundred fifty and not more than two~~  
2 ~~thousand two hundred beds;~~

3 ~~(3) a correctional facility in Lea, Chaves or~~  
4 ~~Santa Fe county of not less than one thousand two hundred and~~  
5 ~~not more than two thousand two hundred beds; and~~

6 ~~(4) design and construction of a support~~  
7 ~~services building, a laundry and an infirmary at the~~  
8 ~~penitentiary of New Mexico in Santa Fe.~~

9 ~~C. The use of funds designated in Subsection B of~~  
10 ~~this section for a correctional facility in Guadalupe county and~~  
11 ~~a correctional facility in Lea, Chaves or Santa Fe county is~~  
12 ~~contingent upon construction of both facilities, so that one of~~  
13 ~~the facilities shall not be constructed unless both of the~~  
14 ~~facilities are constructed, as nearly as possible,~~  
15 ~~simultaneously.~~

16 ~~D.] B.~~ Any balance at the end of any fiscal year in  
17 the [~~special funds created in Section 33-1-18 NMSA 1978~~]  
18 corrections department building fund that [~~are~~] is not needed to  
19 pay leases, loans, bonds or other financing instruments in that  
20 fiscal year may be appropriated by the legislature for  
21 expenditure in succeeding fiscal years by the corrections  
22 department for corrections purposes. "

23 Section 9. NEW MEXICO FINANCE AUTHORITY--REVENUE  
24 BONDS--PURPOSE--APPROPRIATION OF PROCEEDS.--

25 A. The New Mexico finance authority may issue and

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1 sell revenue bonds, payable solely from the prison financing  
2 fund, in compliance with the provisions of the New Mexico  
3 Finance Authority Act in installments or at one time in an  
4 amount not to exceed sixty-five million dollars (\$65,000,000)  
5 for the purpose of financing the design, construction and  
6 equipping of a state correctional facility as provided in  
7 Subsection B of this section when the corrections department  
8 certifies the need for the issuance of the bonds.

9 B. The net proceeds from the bonds are appropriated  
10 to the corrections department to design, construct and equip a  
11 state correctional facility to be located in Bernalillo, Cibola,  
12 Sandoval, Santa Fe, Socorro, Torrance or Valencia county. The  
13 correctional facility shall consist of two hundred forty  
14 administrative segregation or maximum security beds and nine  
15 hundred sixty medium security beds. The facility shall be  
16 designed and constructed so as to be expandable to one thousand  
17 eight hundred beds.

18 Section 10. DELAYED REPEAL. --Section 5 of this act is  
19 repealed effective July 1, 2002.

20 Section 11. EFFECTIVE DATE. --The effective date of the  
21 provisions of Sections 4 and 5 of this act is July 1, 1997.

22 Section 12. EMERGENCY. --It is necessary for the public  
23 peace, health and safety that this act take effect immediately.